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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

Federal Trade Commission, and

State of Ohio ex rel. Attorney General Dave  
Yost,

Plaintiffs,

v.

Madera Merchant Services, LLC, dba E  
Check Processing and echeckprocessing.net, a  
Texas company,

B&P Enterprises, LLC, a Texas company,

Bruce C. Woods, individually and as an  
owner, officer, member, and/or manager of  
Madera Merchant Services, LLC, and B&P  
Enterprises, LLC,

Patricia Woods, individually and as an owner,  
manager, and/or member of Madera Merchant  
Services, LLC, and B&P Enterprises, LLC,

and

Victor Rodriguez, individually and as an  
officer, member, and/or manager of Madera  
Merchant Services, LLC, and B&P Enterprises,  
LLC,

Defendants.

CERTIFICATION OF PLAINTIFF  
FEDERAL TRADE COMMISSION  
COUNSEL J. RONALD BROOKE,  
JR., PURSUANT TO FED. R. CIV. P.  
65(B)(1) IN SUPPORT OF  
PLAINTIFF'S *EX PARTE* MOTION  
FOR A TEMPORARY  
RESTRAINING ORDER AND  
MOTION TO SEAL  
TEMPORARILY THE DOCKET  
AND ENTIRE FILE

(FILED UNDER SEAL)

I, J. Ronald Brooke, Jr., hereby declare as follows:

I am over twenty-one years of age and am a citizen of the United States. I am one  
of the attorneys representing the Federal Trade Commission ("FTC") in this action  
against Madera Merchant Services, LLC, B&P Enterprises, LLC, (collectively the  
Corporate Defendants) and Bruce Woods, Patricia Woods, and Victor Rodriguez  
(collectively the Individual Defendants).

1 I am a member in good standing of the bar of the State of Maryland (Bar No.  
2 0202280002). My work address is Federal Trade Commission, Division of Marketing  
3 Practices, 600 Pennsylvania Avenue, N.W., Mail Stop CC-8528, Washington, D.C. 20580.  
4 Unless indicated otherwise, I have personal knowledge of the facts stated herein and if  
5 called as a witness, would competently testify thereto.  
6

7 I submit this certification pursuant to Rule 65(b)(1) of the Federal Rules of Civil  
8 Procedure, 28 U.S.C. § 1746, in support of the FTC's *Ex Parte* Motion for a Temporary  
9 Restraining Order, Asset Freeze, Other Equitable Relief, an Order to Show Cause Why  
10 Preliminary Injunction Should Not Issue, and Memorandum in Support Thereof ("TRO  
11 Motion") and in support of the FTC's request that the Temporary Restraining Order  
12 ("TRO") be issued without notice to Defendants. I also submit this certification in  
13 support of the FTC's *Ex Parte* Motion to Temporarily Seal the Docket and Entire File,  
14 filed contemporaneously with the TRO Motion.  
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17 Pursuant to Federal Rule of Civil Procedure 65(b)(1), this Court may issue a TRO  
18 without notice to Defendants if "(A) specific facts in an affidavit ... clearly show that  
19 immediate and irreparable injury, loss, or damage will result to the movant before the  
20 adverse party can be heard in opposition; and (B) the movant's attorney certifies in  
21 writing any efforts made to give notice and the reasons why it should not be required."  
22 For the reasons discussed below, the FTC has *not* provided Defendants with notice of the  
23 filing of this action or the TRO Motion. The interests of justice require that these filings  
24 be heard *ex parte*.  
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1                   **A.     Defendant's Scheme**

2                   The evidence set forth in the TRO Motion and supporting exhibits, filed  
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4 concurrently herewith, demonstrates that Defendants have engaged in a multi-million  
5 clandestine Remotely Created Payment Order ("RCPO") payment processing scheme that  
6 withdraws money from consumers' accounts on behalf of third-party merchants, many of  
7 whom are perpetrators of fraud and deceptive scams. To execute their processing  
8 scheme, Defendants have opened business checking accounts under various assumed  
9 names with numerous local banks and credit unions. They often misrepresent the type of  
10 business for which they open the account, and routinely fail to disclose that it will be  
11 used to process consumer payments for third-party merchants via RCPOs. High rates of  
12 returned checks and other red flags have led many financial institutions to close accounts  
13 that Defendants used for their RCPO scheme. When that happens, Defendants open new  
14 accounts with different financial institutions. Defendants have opened such accounts at  
15 more than 25 banks and credit unions, mostly in Texas and Wisconsin. Their scheme has  
16 caused injury to consumers throughout the United States.

17  
18                   The Defendants include a scofflaw, Bruce Woods. In 2008, co-plaintiff, the State  
19 of Ohio, sued him and the Corporate Defendants' predecessors – Banctech Processors,  
20 Inc. ("Banctech") and Electronic Check Corporation – for unlawfully providing RCPO  
21 payment services to Med Provisions, a Canadian telemarketer that had been sued by the  
22 FTC for operating a bogus online pharmacy selling sham "membership packages" to  
23 elderly consumers. The Ohio court found Bruce Woods and his companies liable for  
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1 more than \$430,000 in restitution and civil penalties, and permanently enjoined them  
2 from processing RCPO payments for unlawful telemarketers.  
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4 **B. The Proposed TRO**

5 The proposed TRO would: (1) immediately halt Defendants' unlawful acts and  
6 practices; (2) freeze the Individual and Corporate Defendants' assets to preserve them for  
7 potential restitution to victims; (3) appoint a temporary receiver over the Corporate  
8 Defendants; (4) grant the temporary receiver immediate access to the Corporate  
9 Defendants' El Paso business premises (Bruce Woods residence) to take possession of the  
10 Corporate Defendants' business records; (5) allow for limited expedited discovery; (6)  
11 prohibit Defendants from using or selling consumer data obtained during the course of  
12 the scam; (7) provide other equitable relief; and (8) require Defendants to show cause  
13 why this Court should not issue a preliminary injunction extending such temporary relief  
14 pending an adjudication on the merits.  
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17 **C. Reasons Why Ex Parte Filing is Necessary**

18 There is ample evidence that defendants have the motivation and opportunity to  
19 conceal and dissipate assets and destroy important documents, as demonstrated by,  
20 among other things: (i) the egregious nature of Defendants' scheme, (ii) the Defendant'  
21 using a new company (B&P Enterprises) to perpetrate their scheme when the old one was  
22 flagged by banks; (iii) the fact that the Defendants have continued to migrate to new  
23 banks and credit unions to perpetuate their operation even after numerous accounts have  
24 been closed by banks and credit unions due to the high number of returned checks and  
25 other red flags; (iv) the fact that Bruce Woods has continued to process RCPOs for  
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1 unlawful telemarketers evn after being sued by the state of Ohio; and (v) prior FTC  
2 experience with analogous circumstances of defendants facing financial liability for  
3 unlawful business practices, especially telemarketing scams, and the relative ease with  
4 which critical electronic evidence can be destroyed and money dissipated.  
5

6 Moreover, as detailed in Section III of Plaintiffs' Motion for an Ex Parte  
7 Temporary Restraining Order and Memorandum in Support Thereof ("TRO Memo"),  
8 evidence adduced during the FTC's investigation indicates that the Defendants possess  
9 consumer's sensitive information including their bank account information. There is a  
10 substantial risk that the Defendants will destroy this evidence of harm to consumers when  
11 they have notice of an FTC Action, or they may instead commoditize it for financial gain  
12 by selling it to other individuals or companies engaged in deceptive practices. Thus, to  
13 prevent either of these problematic situations, the TRO should prohibit the destruction of  
14 documents and the sale of consumers' credit card, debit card, or bank account  
15 information.  
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18 **D. Relevant Precedent**

19 It has been the FTC's experience that defendants involved in deceptive acts and  
20 practices that receive notice of the filing of an action by the FTC, or of the FTC's intent  
21 to file an action, often attempt to undermine the FTC's efforts to preserve the *status quo*  
22 by immediately dissipating or concealing assets or destroying documents.  
23

24 The following examples come from FTC actions where defendants not subject to  
25 an *ex parte* TRO hid assets and destroyed documents, and illustrate the FTC's concern  
26 that the Defendants in this case would do the same:  
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- 1 a. In *FTC v. Connelly*, No. 06-701 (C.D. Cal. 2006), the court, following  
2 notice to two of the three individual defendants, issued an *ex parte*  
3 TRO with an asset freeze against a third individual defendant. After  
4 receiving notice of the TRO, all three defendants withdrew a total of at  
5 least \$800,000, some of which was subject to the asset freeze, and  
6 most of which was never recovered.  
7  
8 b. In *FTC v. Jeremy Johnson, et al.*, Civ. No. 10-2203-MMD-GWF (D.  
9 Nev. Mar. 25, 2013), an individual defendant who learned about the  
10 FTC's investigation of his company enlisted nominees to create dozens  
11 of legal entities used to hold and conceal from authorities millions of  
12 dollars in assets, including assets connected to illegal online poker  
13 payment processing.  
14  
15 c. In *FTC v. Physicians Healthcare Development, Inc.*, No. 02-02936  
16 (C.D. Cal. 2002), the defendants were given advance notice of a TRO  
17 hearing. Prior to the hearing and entry of the TRO, the defendants  
18 removed all business records and computer equipment from the  
19 business premises, none of which were recovered.  
20  
21 d. In *FTC v. National Consumer Council*, No. 04-0474 (C.D. Cal. 2004),  
22 the court granted the FTC's *ex parte* application for a TRO with asset  
23 freeze and the appointment of a temporary receiver against all but one  
24 of the corporate defendants. One of the individual defendants then  
25 deleted key electronic files on defendants' shared network server by  
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1 accessing his account through a computer under the control of the  
2 corporate defendant that was not under the receivership.

3  
4 e. In *FTC v. E.M.A. Nationwide Inc.*, No. 12-cv-02394 (N.D. Ohio 2012),  
5 the court denied the FTC's request for an *ex parte* TRO with a  
6 corporate asset freeze. Within days, the defendants withdrew more  
7 than \$152,000 from a bank account.

8  
9 f. In *FTC v. Transcontinental Warranty, Inc.*, No. 09-2927 (N.D. Ill.  
10 2009), the FTC moved for a TRO with notice to the defendants and the  
11 court issued it, freezing defendants' assets and appointing a receiver.  
12 However, when the receiver and counsel for the FTC arrived at the  
13 corporate defendants' premises pursuant to the court's order, hundreds  
14 of folders with labels indicating that they contained records of  
15 defendants' most recent transactions were found empty. In addition,  
16 five computers, including that of the corporate defendants' CFO, were  
17 missing – allegedly stolen the night before the arrival of the receiver  
18 and counsel for the FTC.

19  
20 g. In *FTC v. Canada Inc., et al.*, No. 04 C 4694 (N.D. Ill. 2004),  
21 Canadian authorities executed a search warrant on the business  
22 premises of Canadian defendants. The FTC subsequently filed its  
23 complaint and its motion for a TRO with asset freeze, and provided  
24 notice to the defendants. The FTC subsequently discovered that the  
25 defendants had made several transfers totaling approximately \$70,000  
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1 after receiving notice of the FTC's action. The FTC was unable to  
2 recover the \$70,000.

3  
4 h. In *FTC v. Access Resource Services, Inc.*, No. 02-60226 (S.D. Fla.  
5 2002), when an individual defendant became aware of the noticed  
6 TRO hearing, he attempted to exploit the Florida homestead  
7 exemption by making a \$579,600 payment to pay off the mortgage on  
8 his residence.

9  
10 i. In *FTC v. Thomas E. O'Day*, No. 94-1108-CIV-ORL-22 (M.D. Fla.  
11 1994), the district court denied the FTC's request for an *ex parte* TRO  
12 with asset freeze and scheduled a noticed hearing on the relief sought.  
13 Several days later, the FBI executed a search warrant on defendants'  
14 business premises as the FTC served notice of its action and the  
15 upcoming hearing. Within hours, an individual defendant withdrew  
16 approximately \$200,000 from one of his bank accounts.

17  
18 j. In *FTC v. Applied Telemedia Engineering and Management, Inc., et*  
19 *al.*, No. 91-635 (S.D. Fla. 1991), the defendants were advised,  
20 pursuant to an agreement with the FTC, that the FTC had filed its  
21 complaint and intended to seek a TRO with an asset freeze from the  
22 court. When the FTC's agents went to the defendants' offices to serve  
23 process, they observed defendants removing boxes of documents from  
24 the premises. The FTC moved for, and received, an *ex parte* TRO the  
25 following day.  
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1           The following examples have been identified within the FTC as incidents in  
2           which an *ex parte* order helped remedy or mitigate defendants' attempts to dissipate  
3           assets or destroy documents:  
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5           a.     In *FTC v. Goldman Schwartz Inc.*, No. 13-cv-00106 (S.D. Tex.  
6                   2013), the FTC obtained an *ex parte* TRO with an asset freeze  
7                   against numerous corporate and individual defendants, including  
8                   the companies' owner. Within an hour of being served with the  
9                   TRO, but before the asset freeze had been fully implemented, the  
10                  owner withdrew approximately \$268,000 from a frozen corporate  
11                  account. Shortly thereafter, the owner sold approximately  
12                  \$160,000 in securities held in a personal trading account. The next  
13                  day, the owner's wife withdrew another \$18,500 from a non-  
14                  defendant corporation's account that was subject to the asset  
15                  freeze. Because the court had issued its asset freeze in advance of  
16                  these actions, the FTC and a court-appointed monitor were able to  
17                  recover all of the money.  
18

19           a.     In *FTC v. Group One Networks, Inc.*, No. 8:09-CV-0352-T-26-  
20                   MAP (M.D. Fla. Feb. 25, 2009) the court granted an FTC's *ex*  
21                   *parte* motion for a TRO with an asset freeze, which the FTC  
22                   served on banks known to hold accounts of defendants. After  
23                   being served with the order, one of the defendants successfully  
24                   cashed two \$10,000 checks that were installment payments for an  
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1                   undisclosed \$50,000 loan. The FTC, however, through expedited  
2                   asset-related discovery, was able to identify the loan payments and  
3                   the individual defendant subsequently deposited the \$20,000 into a  
4                   frozen bank account to cure any possible contempt of the asset  
5                   freeze.  
6

7                   b.    In *FTC v. Sameer Lakhany*, No. SACV 12-337 CJC (C.D. Cal.  
8                   2012), the day after the court granted the TRO, but before the FTC  
9                   could effect service, the defendant's employee notified the  
10                  defendant of the FTC's lawsuit and receivership. The individual  
11                  defendant proceeded to withdraw \$204,000 from corporate bank  
12                  accounts in violation of the asset freeze. The defendant later  
13                  stipulated to the contempt, and the majority of the withdrawn funds  
14                  was recovered.  
15

16                  c.    In *FTC v. Data Medical Capital, Inc.*, No. 99-1266 (C.D. Cal.  
17                  2009), the Commission moved for civil contempt and obtained an  
18                  *ex parte* TRO and asset freeze. When one of the defendants  
19                  learned the Commission was investigating his possibly  
20                  contemptuous actions, he transferred approximately \$1 million to a  
21                  new personal bank account prior to the Commission's filing.  
22                  While the receiver appointed pursuant to the *ex parte* TRO traced  
23                  these assets, found the new account, and returned the funds to the  
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1 receivership estate, the receivership estate was still diminished by  
2 the fees accrued by the receiver's efforts to retrieve the funds.  
3

4 d. In *FTC v. Prime Legal Plans LLC*, No. 12-cv-61872 (S.D. Fla.  
5 2012), upon hearing of the *ex parte* TRO including an asset freeze,  
6 the Defendants transferred \$1.7 million in assets to a girlfriend and  
7 a mother. The bank was able to recover most of it, but  
8 approximately \$200,000 was not returned.  
9

10 e. In *FTC v. Asia Pacific Telecom, Inc. et al.*, No. 10-cv-3168 (N.D.  
11 Ill. 2010), the FTC obtained an *ex parte* TRO freezing the  
12 defendants' assets and prohibiting them from destroying  
13 documents. After being served with the TRO, one of the  
14 individual defendants, Hans Smit, deleted an email account used to  
15 conduct many of the illegal practices at issue in the FTC's  
16 complaint. Smit took this step despite being served with a  
17 discovery request by the FTC for documents in the account and  
18 despite multiple demands from the court-appointed receiver for  
19 access to the account. The court ultimately held Smit in contempt  
20 for deleting the account in violation of the TRO.  
21

22 f. In *FTC v. Fereidoun "Fred" Khalilian*, No. 10-21788 (S.D. Fla.  
23 2010), the Commission sought and obtained an *ex parte* TRO with  
24 an asset freeze. Before the banks in which the defendants held  
25 accounts could put in place the freeze, one of the individual  
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1 defendant's employees withdrew large amounts of money from the  
2 company's bank accounts. The individual eventually returned some  
3 – but not all – of this money. Additionally, the individual  
4 defendant, under cover of darkness, attempted to remove assets  
5 located in his personal residence.  
6

- 7 g. In *FTC v. American Entertainment Distributors, Inc.*, No. 04-  
8 22431 (S.D. Fla. 2004), the court entered an asset freeze that froze  
9 assets of both corporate and individual defendants. Within hours  
10 of receiving notice of the asset freeze, one of the individual  
11 defendants withdrew \$39,500 from his bank. Because he violated  
12 the terms of the asset freeze, the FTC was able to compel the  
13 individual defendant to return the money.  
14
- 15 h. In *FTC v. Assail Inc.*, No. 03-007 (W.D. Tex. 2003), the court  
16 issued an *ex parte* TRO, including an asset freeze. The lead  
17 defendant nonetheless transferred \$200,000 after being served with  
18 the TRO. Following contempt proceedings and a lengthy appeal,  
19 the defendant repaid the transferred funds.  
20
- 21 i. In *FTC v. Hanson Publications, Inc.*, No. 02-2205 (N.D. Ohio  
22 2002), Canadian defendants transferred \$105,000 from a U.S.  
23 account to a Canadian account within two days of receiving service  
24 of the TRO with asset freeze. This money was later returned as a  
25 predicate to the release of attorney's fees.  
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1 j. In *FTC v. SkyBiz.com, Inc.*, No. 01-396 (N.D. Okla. 2001), within  
2 days of the service of the TRO with an asset freeze provision, one  
3 of the primary defendants convinced an overseas trustee to  
4 withdraw \$1,000,000 from the offshore account of a foreign  
5 affiliate. Because a domestic correspondent bank had been served  
6 with the TRO, it refused to transfer the funds. The money in the  
7 offshore account was preserved, and ultimately used to provide  
8 consumer redress.  
9

10  
11 In the FTC's experience, defendants may also learn about a case against them  
12 from a docket monitoring service. For example, in *FTC v. Wazzu Corp., et al.*, SAV CV  
13 99-762 (S.D. Cal. 1999), when FTC staff arrived at defendants' business premises to  
14 serve a temporary restraining order, it learned that defendants had already learned about  
15 the action against them from a monitoring service to which their counsel subscribed. The  
16 monitoring service would not have learned of the action at the time of filing if the file and  
17 docket had been temporarily sealed.  
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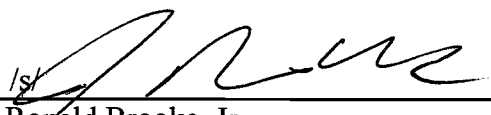
19 For the above reasons, as contemplated by Fed. R. Civ. P. 65(b)(1), there is good  
20 cause to believe that immediate and irreparable damage will result to consumers,  
21 including the destruction of Defendants' records and the dissipation or concealment of  
22 assets, if Defendants receive advance notice of the FTC's application for a TRO. Thus, it  
23 is in the interests of justice that this Court grant such application without notice.  
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25 For the same reasons, there is good cause to believe that immediate and  
26 irreparable harm will result to consumers if any of the Defendants receive premature  
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1 notice of the filing of this action. Thus, the interests of justice would be served if the  
2 Court grants the Commission's Emergency *Ex Parte* Motion to Temporarily Seal the  
3 Docket and Entire File.  
4

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on July 17, 2019 in Washington, D.C.  
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10 \_\_\_\_\_  
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12 Federal Trade Commission  
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